



Protecting Taxpayers & Students: Incentive Compensation & Gainful Employment Regulations

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Last spring, the Obama Administration initiated a negotiated rulemaking process to update and strengthen regulations intended to prevent the exploitation of students and protect taxpayer investments in college financial aid. Based on input at public hearings around the nation, the Education Department identified areas needing revision, including incentive compensation and gainful employment.

While these financial aid regulations apply to public, nonprofit and for-profit colleges, the stakes for students and taxpayers are highest in the for-profit sector:

- Nearly half of student loan borrowers who entered repayment in 2007 and defaulted by 2009 attended for-profit schools (44 percent), even though only 7 percent of students attend these schools.¹
- Nearly *one in four* Pell Grant dollars went to students attending for-profit schools in 2008-09 (24% or \$4.3 billion), almost *double* the share a decade earlier.²
- Students at for-profit institutions are more likely to borrow, and to borrow much more, than students in other sectors:
 - At for-profit institutions, 96 percent of bachelor's degree recipients had student loans in 2008, and their average debt was \$33,050. At public and non-profit colleges, 65 percent of bachelor's degree recipients had loans, and their average debt was \$22,750.
 - At for-profit institutions, 98 percent of associate's degree recipients had loans in 2008, and their average debt was \$19,700. At public and non-profit colleges, 40 percent of associate's degree recipients had loans, and their average debt was \$10,900.³

Incentive Compensation: To protect students from high-pressure and deceptive sales tactics, federal law has long banned colleges from providing “any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid.”

- The Bush Administration undercut this prohibition by allowing such payments if they were not based “solely” on the number of students recruited or aid received.
- Since this change in 2002, egregious examples of overly aggressive recruiting have emerged. One for-profit recently paid \$78 million to settle a whistleblower False Claim Act lawsuit and paid an additional \$10 million to the Department of Education to resolve claims over improper incentive compensation to recruiters.
- The Obama Administration proposed making the regulations consistent with the statutory ban on incentive compensation, while providing colleges with public guidance to help

¹ TICAS analysis of U.S. Department of Education three-year Cohort Default Rate data for FY 2007.

² U.S. Department of Education, Office of Postsecondary Education (OPE), “Pell End of Year Report,” 2008-09, 1998-99, <http://www2.ed.gov/finaid/prof/resources/data/pell-data.html>

³ Calculations by TICAS on U.S. Department of Education, National Center for Education Statistics (NCES), National Postsecondary Student Aid Study (NPSAS), 2007-08, <http://nces.ed.gov/surveys/npsas/>

them comply and allowing them to pay employees based on performance unrelated to the number of students enrolled or amount of aid awarded.

- A group non-federal negotiators, including representatives of public, non-profit and for-profit colleges, met throughout and between negotiating sessions to debate and discuss new regulations for incentive compensation. Their shared agreement formed the backbone of the draft regulations discussed by the larger group of negotiators, but the for-profit representative changed position and blocked consensus on the revised regulations in the final minutes of the last session.

Gainful employment: In order to be eligible for federal student aid programs, federal law requires most programs offered by for-profit institutions, and any program of less than two years, to “prepare students for gainful employment in a recognized occupation.” Yet the current regulations include no official definition of “gainful employment.” As a result, some unscrupulous schools are recruiting students for expensive programs that do not train people for jobs that pay enough to cover the cost of attending the program. Such programs leave students deep in debt they cannot repay, and cost taxpayers millions of dollars in Pell Grants and defaulted student loans.

- The Obama Administration has proposed defining gainful employment to ensure that students and taxpayers get their money’s worth, and that students have a fair shot at being able to repay their student loans after graduating.
 - *Defining gainful employment will prevent students and taxpayers from getting ripped off, not limit access to quality programs.* Just as it has before, the for-profit sector is falsely claiming that any changes will deny students access to vital programs. When Congress first proposed limiting federal student aid for schools with extremely high student default rates, the for-profit sector also claimed it would reduce student access. However, the cohort default rules did not reduce student access and did reduce loan defaults. Similarly, defining gainful employment will simply require some schools to improve their programs and/or charge less.
 - A recent analysis by UBS concluded that many schools could afford to lower prices and still make a healthy profit given their high operating margins, including a 37% operating margin at ITT, 34% at Strayer, and 28% at Apollo. UBS found that any impact from the Department’s gainful employment proposal would be more than offset by for-profits’ gains from state budget cuts for public colleges, which create lucrative opportunities to recruit students to for-profit institutions.⁴
- The Obama Administration has welcomed suggestions for how best to measure gainful employment.
 - During the three-month-long negotiated rulemaking process that began last fall, *the for-profit sector never offered any proposals for defining gainful employment.*
 - The Education Department plans to issue a draft regulation in May, after which there will be a public comment period. After comments are received, final rules will be issued by November 1, 2010, and the new rules will begin to take effect July 1, 2011.

⁴ UBS Investment Research, Education 101, March 18, 2010, by Andrew Fones.